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NOMINATION OF S. JAY PLAGER

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF S. JAY PLAGER TO BE ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

JUNE 14, 1988

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NOMINATION OF S. JAY PLAGER

TUESDAY, JUNE 14, 1988

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Lawton Chiles presiding.

Present: Senator Chiles.

OPENING STATEMENT OF SENATOR CHILES

Senator Chiles. The Committee will come to order.

Good morning. The Committee on Governmental Affairs is holding a hearing today on S. Jay Plager, the President's nominee to be the Administrator of the Office of Information and Regulatory Affairs.

The Office of Information and Regulatory Affairs, OIRA, was created by the Paperwork Reduction Act, legislation I had the good fortune to sponsor in the Senate in 1980.

We in the Congress intended to do a number of things with the creation of that office within the Office of Management and Budget, OMB. We wanted to strengthen the Government-wide management function of OMB, and we wanted to provide strong leadership within the Executive Branch, responsive to the Congress, in order to achieve the purposes of the Act. And we wanted to pinpoint accountability within the bureaucracy for reducing the unnecessary regulations and paperwork our constituents often face and bring to our attention.

Above all, the office and its Administrator were envisioned as a central feature of the Act's overall objective to establish an incentive and accountability structure within the Executive Branch to make government work better and be more responsive to the public.

Jay Plager is the first Presidential appointment to this office requiring the advice and consent of the Senate. If confirmed, he will not be the first Administrator. Jim Miller, Chris DeMuth, Doug Ginsburg, and Wendy Gramm precede him. But we are establishing a precedent with this confirmation proceeding. Before beginning our hearing, I want to speak to the history behind the precedent.

The Paperwork Act of 1980 did not require Presidential appointment and Senate confirmation of the Administrator. While the Senate version of the bill proposed this approach, President Carter believed the Director of OMB should be able to select the person without involvement with the White House or Congress. In ex-

change for dropping the requirement, he agreed to a separate authorization for OIRA funding, thereby triggering a separate appropriation account and a mechanism for accountability to Congress.

The mandate to separately account for OIRA's activities was initially ignored by the new administration and Director Stockman. I believe that is one of the reasons we had an erosion of trust between the Administration and Congress in the conduct of OIRA's activities. It is the reason I asked that we go back to the requirement for Senate confirmation in the 1986 amendments to the Act. Senate confirmation of the Administrator is a means to establish and restore the trust relationship needed between Congress and this office.

As I have commented upon before, the reauthorization amendments of 1986 represented a reaffirmation of what Congress intended in 1980 when it passed the Paperwork Reduction Act and a fresh agreement between the Congress and the Executive on how things should proceed under the Act in the future.

A part of that agreement was better accountability to Congress. That is why you are before us today, Mr. Plager. We will be trying to build on the foundation for success we put together in 1986, and your performance in the upcoming year will say a lot about whether a modicum of trust can be maintained between OMB, Congress, and the public, and whether there will be folks in Congress who try to renew the attempt to end OIRA's funding.

Let me add, the other key parts of the 1986 agreement were amendments requiring more sunshine on OIRA's activities and better public participation in agency paperwork decisions. Openness and a commitment to encourage more public participation in decision-making are two traits that you can be sure Congress is looking for in an Administrator of OIRA.

I have reviewed your answers to the Committee's prehearing questions. You bring to this hearing a sound understanding of what the Paperwork Reduction Act stands for.

We will be asking you some additional questions this morning in order to hear your views. We are delighted to have the Director of the Office of Management and Budget here, Mr. Jim Miller. We are also delighted to have Senator Quayle, who is from the home State of Mr. Plager. We are delighted to have you all speak to us this morning.

Senator Lugar is unable to be with us this morning, but he did have a statement in introduction of Mr. Plager which we will insert in the record at this point.

[The statement of Senator Lugar follows:]

STATEMENT BY HON. RICHARD G. LUGAR, U.S. SENATOR FROM THE STATE OF INDIANA

Mr. Chairman, I am honored to have the opportunity to introduce to the Committee S. Jay Plager, nominee for the position of Administrator of the Office of Information and Regulatory Affairs, within the Office of Management and Budget.

Jay Plager and his wife Ilene Nagel came to Washington, DC in 1986, when Ilene was appointed to serve on the U.S. Sentencing Commission and Jay was chosen as Counselor to the Under Secretary at the Department of Health and Human Services. They are both " on loan" to the federal government from Indiana University Law School, where the two of them served as professors, and Jay spent seven years as Dean of this prestigious school.

Jay Plager has had a varied and impressive career in the areas of law, administration and government service. He is a scholar in his own right—graduating first

in his class at the University of Florida Law School in 1958, where he was editor-in-chief of the law review and a member of the Order of the Coif. He went onto Columbia University in New York and obtained his Masters of Law two years later. Jay Plager has published widely in various law and social science journals.

Jay also took time to serve his country, both in active duty in the United States Navy and over a period of sixteen years in the Naval Reserve. He started his career as a professor of law at the University of Florida. Throughout his tenure as a law professor and dean he has been associated with such eminent institutions as the University of Illinois, the University of Wisconsin, Indiana University, Stanford University, the University of the Pacific and Cambridge University and Trinity College in England.

Jay currently serves as the Associate Director for Human Resources, Veterans and Labor in the Executive Office of the President. In this position he is responsible for the budgets of over twenty-five agencies of the federal government. This experience will put him in good stead as he takes on new duties in the OIRA.

Jay shares with me a love for running. The discipline he displays in running marathons is certainly an indication of the effort he puts forth in every facet of his life.

Mr. Chairman, I urge you and your colleagues on the Committee to give favorable consideration to Jay Plager's nomination.

TESTIMONY OF HON. DAN QUAYLE, U.S. SENATOR FROM THE STATE OF INDIANA.[1]

Senator QUAYLE. Mr. Chairman, if I could begin, first I want to thank you for your introductory remarks and for going back and giving us a little bit of history of the office.

You are absolutely correct, this is the first time that this office will be confirmed by the Senate, which I think shows the importance of the office.

Jay Plager is, I think, the kind of person we need to attract into public life. He has broad experience in the Federal Government, and the field of law prepared him well for this position of great trust and judgment and responsibility.

Jay has proven himself time and again to be a competent, effective administrator, and his credentials and accomplishments speak for themselves.

Currently, Jay Plager is the Associate Director for Human Resources, Veterans and Labor of the Office of Management and Budget. Prior to his present appointment in OMB, Jay served as the Counselor to the Under Secretary of Health and Human Resources for a year.

Before turning to public service, Jay worked at Indiana University, where he had been a professor of law since 1977, and was Dean of the Law School from 1977 to 1984. While Dean of the Law School, Mr. Plager instituted a Law School Office of Research and Development and established an Office of Law School Development.

While in Indiana, Mr. Plager served on the Board of Directors of the Indiana Continuing Legal Education Forum and on the Board of Directors of the Indiana Bar Foundation, and was a member of the House of Delegates of the Indiana State Bar Association. He is also a very active member of the Association of American Law Schools, for which he has served on many committees and accreditation teams.

Mr. Plager has taught or has been a visiting scholar at six universities besides Indiana, including Stanford and Cambridge. Mr. Plager has published numerous scholarly works on a diversity of

[1] See p. 19 for Senator Quayle's prepared statement.

subjects. He has a special interest in administrative law, which I think will suit him very well for this job, including land use and environmental issues.

Mr. Chairman, he has a very impressive background. I do not think I need to go on and on. I could. I would just add my personal endorsement. I have known Jay for quite a while. He is a man of intellect and integrity and somebody we need to put in these very important positions of trust and responsibility.

In the interest of time, because I know you want to get on with the questions after the Director speaks, I would ask that my entire statement be made a part of the record.

Thank you.

Senator CHILES. The Committee appreciates very much your taking the time to come over here. We know of your interest in trying to see that government works efficiently, effectively, and tries to reduce paperwork. It is a strong recommendation that you give the Committee by your appearance today.

Senator QUAYLE. Thank you very much for your indulgence and your interest, Mr. Chairman.

Senator CHILES. Senator Sasser was unable to attend this morning's hearing, but he does have a statement that he would like submitted for the record.

[The statement referred to follows:]

OPENING STATEMENT OF SENATOR SASSER

I want to commend the committee and Senator Chiles for conducting this confirmation hearing today. This is the first Senate confirmation of a nominee for Administration of the Office of Information and Regulatory affairs at the Office of Management and Budget.

The Office of Information and Regulatory Affairs is in a powerful position with respect to the Federal agencies. Yet there has been considerable controversy in recent years about how this regulatory power is being used.

The potential for this Office to perform a valuable function is also present. As the hearings I recently chaired of the Subcommittee on Government Efficiency showed, there is indeed considerable duplication of information collected by the Federal Government. There is often uncertainty about what information the Federal Government possesses, whether it is accessible, and whether there is a practical use for it.

The Office of information and Regulatory Affairs, which plays a key role under the Paperwork Reduction Act, is in a central position to supervise information collection by the Federal Government.

Yet the powers vested in the Office of Information and Regulatory Affairs, however, carry a tremendous potential for abuse. For example, it gives the Office of management and budget a means of affecting highly technical regulations promulgated by independent agencies. But it is not clear to me whether the Office of Mangement and Budget has anything of value to add to in reviewing highly technical regulations put out by expert, independent agencies such as the Occupational Safety and Health Administration, the Food and Drug Administration and the Environmental Protection Agency.

Indeed, some would suggest that this process is being used in order for the administration to put its stamp on every single piece or regulatory business conducted by Federal agencies. Consequently, I hope that we will not see highly technical, safety-related regulations from independent agencies fundamentally rewritten by this Office which has no special expertise in these fields.

The expertise within the Federal Agencies is worthy of respect. Bureaucratic second guessing of sound regulatory decisions needs to be kept to a minimum.

I look forward to hearing Mr. Plager's views on these issues and I have a few questions that I would like to have answered before this nomination comes before the full Senate.

Thank you, Mr. Chairman.

Senator CHILES. Director Miller, I am delighted to see you. When I think back over the history of this paperwork office and another office that I had something to do with in your shop, the Office of Federal Procurement Policy, I believe there is one absolute essential which determines whether these offices can and will perform. It is whether they have the support and the understanding of the Director of OMB.

We are setting a precedent today in the first OIRA nomination. As a former Administrator, I know it is an office you care about. I also know that you have lent support, strong support to both the OIRA and the Federal Procurement Office. Some day when you are sitting down with any of your successors, I think you would make a tremendous contribution if you kind of whisper in their ear that neither of these offices will function, really, no matter what the Congress wants to do, if they do not have the direction and support of the Director.

We are delighted to have you as part of this precedent. I want to take this opportunity again to express my appreciation for your efforts and your support and cooperation when we were making the 1986 amendments. You were very helpful at that time.

TESTIMONY OF JAMES MILLER, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. MILLER. Thank you, Mr. Chairman.

I appreciate the opportunity to be here today on behalf of Jay Plager. This is one of the most important posts in government, in my opinion. You, Mr. Chairman, are to be congratulated not only for having this hearing, but, more importantly, for the work that you did in bringing off the Paperwork Reduction Act. It was something that was needed very much and you should be congratulated also for your oversight of the office's activity in making sure that it carries out the responsibilities enumerated in the Act.

Now, in choosing Jay Plager, I think the President has chosen well. He is a scholar, he has been a law school professor and researcher of great distinction. He is also a gentleman, and I mean that in the broadest and best sense. He is a man of excellent character.

I have known him for some time. He has fine judgment and he has inherent fairness. He is also well-qualified. He has held executive positions in universities as a dean of a large law school, he has been committed to public service not only in the universities but in government. He has been at the Department of HHS and he has also been at OMB, where his portfolio of budget activities covers a range of expenditures that exceed the gross national product of all but a handful of countries in the world.

I am proud to recommend him, Mr. Chairman, for your consideration and consideration of your colleagues, and I look forward to working with him to achieving those goals. He is a man of great distinction, Mr. Chairman, and I think that he will make an excellent head of the Office of Information and Regulatory Affairs.

I know he is supported by his family who, as you know, are here today. His wife is an outstanding public servant herself, is a

member of the Sentencing Commission, and I could not be prouder and more delighted to be here to support his nomination.

Thank you.

Senator CHILES. Well, we thank you very much for your own statement in support of Mr. Plager and, again, for your interest in this office and its successor.

Mr. MILLER. Thank you.

Senator CHILES. Jay, I want to welcome you to the Committee and I want to congratulate you on your nomination. I had a chance to say hello to your family. I think, maybe for the record, it would be nice if you would introduce them to the Committee.

TESTIMONY OF S. JAY PLAGER, NOMINEE, TO BE ADMINISTRATOR, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. PLAGER. Thank you, Mr. Chairman. It would be my pleasure to introduce my family. First is my wife, Commissioner Ilene H. Nagel, of the U.S. Sentencing Commission, here in Washington. Ilene is also a professor of law at Indiana University.

Sitting next to her is my newest daughter-in-law, Pamela Plager, who is Assistant Treasurer of Bankers Trust, in New York. And next to her is her husband, my youngest child, my youngest son, although he is a bit big to be called a young child, Dan Plager, who is a Vice President of Citibank, also in New York.

Next to Dan, on the end, is my middle child, my oldest son, David Plager, who is a pediatric ophthalmologist. He is visiting this year with Marshall Parks, here in Washington, who is one of the outstanding surgeons in pediatric ophthalmology.

My eldest child, Anna Plager, is a Natural Resources Manager for the State of Alaska, lives in Fairbanks, and was unable to make the trip out here.

Thank you, sir.

Senator CHILES. Well, we are delighted to see you and your wonderful family here. I understand your wife preceded you in the confirmation proceedings, I mean went before you and has already had Senate confirmation, so you just become the second one to go through that.

Mr. PLAGER. Yes, I held her hand through it and she has been holding mine.

Senator CHILES. Very good. If you would please raise your right hand: Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PLAGER. I do, sir.

Senator CHILES. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the Administrator of the Office of Information and Regulatory Affairs?

Mr. PLAGER. No, sir, I do not.

Senator CHILES. Is there anything that you are aware of in your background which might present a conflict of interest with the duties of your office?

Mr. PLAGER. No, sir, other than my connection with Indiana University, which was discussed at some length in the papers I filed with the Committee.

Senator CHILES. I will ask you some questions about that.

Mr. PLAGER. Yes, sir.

Senator CHILES. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted Committee of the Congress if you are confirmed?

Mr. PLAGER. I do so agree, sir.

Senator CHILES. Let me state that the Chairman and ranking member of the Committee have reviewed an FBI report regarding your nomination, Committee investigators have examined your biographical,[1] financial and tax returns for potential conflicts of interest. Your financial disclosure report was also examined by the Office of Government Ethics. There are no outstanding issues as a result of these examinations which will present the Committee a difficulty in recommending your nomination.

Now let me turn to a specific question on your situation with the university. You indicate in your pre-hearing questions[2] that you intend to recuse yourself from any particular matter which might have a direct and predictable effect on Indiana University. Is that correct?

Mr. PLAGER. Yes, sir.

Senator CHILES. You do not expect to recuse yourself from issues affecting education generally or universities generally unless an issue appears to be a matter which would affect Indiana University distinctly?

Mr. PLAGER. Yes, sir.

Senator CHILES. The Committee has asked for a list of information requests which are subject to OIRA review that relate to higher education. Given the criteria you have established for avoiding a conflict with your situation at Indiana University, would any of the information requests listed have presented you with a potential conflict?

Mr. PLAGER. I asked the OIRA staff to go through that list. As you know, it is a rather lengthy printout, which they did by computer search, and they advised me that there were at most two or three items which even remotely could be considered distinctively related to Indiana University. One of them, for example, had to do with the State of Indiana SIP, part of the State's air pollution regulations. In terms of the generic paperwork and regulatory oversight activities of the Office, I think it is most unlikely that anything would arise that would trigger the refusal requirement, and there was nothing in that list that I submitted at the request of your staff that would appear to be such a trigger.

Senator CHILES. I do not know that we put on the record, and I think we should, that the potential conflict you might have with Indiana University is the fact that you are tenured and you are continuing that tenure.

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[1] See p. 23 for Mr. Plager's biographical information. The financial information has been retained in the Committee files.

[2] See p. 35 for Mr. Plager's prehearing questions.

Mr. PLAGER. Yes, sir. That is correct. I have the right to return to the university.

Senator CHILES. I want to get that on the record. Would you give us an example of a situation in which you would recuse yourself?

Mr. PLAGER. As I noted, the generic regulatory activity of the Office is most unlikely to affect Indiana University distinctly. Indeed, I cannot give you an example of a case in the context of OMB review of a proposed information collection which might trigger a refusal. There are other areas where it might come up. For example, one of the Federal agencies might enter into negotiations with Indiana University specifically with regard to an information resource management program involving some special new technology process that required review by OIRA under the Paperwork Reduction Act. That would, I think, very clearly be an example of a situation in which I would recuse myself. The OIRA staff will be fully apprised of the importance on their part of identifying such an occasion if it arises, and I would simply recuse myself conistent with the agreements we have.

Senator CHILES. As you know, I indicated to the administration that confirmation of your nomination would be complicated if the new regulations implementing the 1986 amendments were not issued before Members had to vote on your appointment. My thinking was related to the Internal Revenue Service resistance to issuing the regulations.

If the administration was going to buy the IRS arguments, I felt that would be tantamount to tying your hands behind your back. The regulation was issued May 5th. It will go into effect on June 9th, and I want to ask you a few questions about it.

Would you explain how the new requirements for agencies to publish their estimate of burdens on paperwork requirements will work, how you expect them to work?

Mr. PLAGER. I understand they will be expected to work in this manner: The requirement is that agencies will for the first time publish on the face of an information collection document a block—there will be a block right on the document—in which the agency will set forth its estimate of the burden hours required on the part of members of the public to process and develop the information, complete the form, and submit the form as required.

That estimate will inform the public of the agency's expectation as to how much time it will take to complete the form. At the same time, text in the block will invite the public to respond back, both to the agency and to OIRA, as to how close those estimates are or whether the process requires reevaluation or reassessment in terms of the burden hours.

Senator CHILES. What do you anticipate the effect of the new requirement would be on the agencies and the public?

Mr. PLAGER. Well, Mr. Chairman, in the past, OIRA has been largely limited to the agency's estimate of what the burden hours would be in these information collections. I have no doubt that most agencies have made a *bona fide* effort to estimate what that burden would be. But the impact, I think, of this new process is going to be very significant in terms of providing both the agency and OIRA for the first time with feedback from the public, by providing an opportunity for the public to communicate specifically

with regard to these burdens. I think that this will provide OIRA with a basis to engage the agencies with regard to the agencies' own estimates of the burden they are imposing on the public and the necessity for those burdens.

Senator CHILES. Well, do you mean that we might even find out that the Tax Simplification Act was not quite as simple as we had anticipated?

Mr. PLAGER. As one taxpayer, sir, I have already discovered that, but I think we may discover it as a matter of governmental policy, yes, sir.

Senator CHILES. What role do you see the Administrator of OIRA, your role in getting the word out to the public on this new opportunity to participate? The fact that the right is there if no one knows about it will not work.

Mr. PLAGER. Yes, sir, I think that is a very important point. The regulations in themselves attempt to get the word out by the manner in which the information is now required from the agencies to be presented to the public. I think we need to go considerably beyond that.

I think it would be helpful for OIRA and the agencies to find additional routes for getting the public to become aware of this. I would like, for example, to see OIRA consider holding some public hearings when OIRA begins to receive feedback from the public on particular information collections. If that feedback raises significant questions as to whether an agency has understood or accurately estimated its work, its burden, I think it would be quite appropriate for OIRA to sponsor public hearings to discuss those issues with the agencies. I think it would be appropriate for the Administrator or other officials, both in the agency and in OMB, to avail themselves of every opportunity in public meetings or in speeches or radio-TV—whatever opportunities become available—to make the public aware of this important opportunity to bring feedback to government.

Senator CHILES. Well, I think that is very important. I hope you will be able to find some forums and seek out forums on that.

Will the agency disclosure requirement apply to the 1990 Census form?

Mr. PLAGER. The requirement for stating the burden is government-wide. There is, however, a procedure for an agency to request a waiver from that. To my knowledge, no such waiver has been requested by the Census Bureau so I have no reason to think it will be treated in any other way than as the regulation requires.

Senator CHILES. Well, we know the Census provides tremendously important information for all kinds of data, estimates and other areas we collect that for. At the same time, I think we only have to look at some of those forms and see that it also lends itself to one of these "what if" or "maybe we should" and "wouldn't it be nice if perhaps we knew this," and that being a sort of a requirement on people to have to reply to that form, we all have to acknowledge that it has gone a long ways from counting the households to providing that basic information that was the sort of requirement set up for that.

Will it apply to the 1988 tax forms?

Mr. PLAGER. Again, Senator Chiles, my answer would be essentially the same. There is no exception in either the Act or the regulations for the IRS, and, to my knowledge, no request for waiver has been submitted by them, so I assume it would apply to them.

Senator CHILES. The fundamental premise of the Paperwork Reduction Act is that every person, be they a business or State or local government, university or individual citizen, is entitled to an assurance that their government has checked for need and efficacy before they are asked to provide or maintain information. That is what the public protection section of the Act is all about. I think it is the guts of the Act. That is what the display of control numbers on forms and regulations is designed to indicate, that the government has checked. If the paperwork request does not display that control number, then we say it is a bootleg request, it is in violation of the assurance that the Paperwork Reduction Act was intended to provide all citizens, and it is legally unenforceable.

I want to ask you your view, as the Administrator of OIRA's responsibility, what you see that responsibility to be when a bootleg request is brought to your attention by a member of the public?

Mr. PLAGER. I think the Administrator's responsibility is straightforward on that, Senator. A bootleg information collection is contrary to the provisions of the Paperwork Reduction Act and the procedures that have been set up pursuant to it. If an agency is engaged in that activity and that comes to the attention of the Administrator of OIRA, I think the Administrator has the responsibility to immediately ascertain the facts.

If in fact the agency is engaged in such activity, the Administrator should order the agency to cease and desist from engaging in that activity, and to have the agency inform the persons who may have been misled by the request that they are not required under the law to respond to that information collection. If the agency, for some reason, fails to do that, then I think the burden is on the Administrator to insure that the public is informed that that collection is not required to be responded to under the law.

Senator CHILES. Well, that is certainly the right and correct answer. Perhaps it is easier to give than it is to enforce at times, depending on who has issued the bootleg form at the time, and I hope you remember that answer. As I say, it sometimes might be difficult.

I want to add here, too, that I believe having the account number not only sort of protects the public, which it certainly does, but I think it takes away a little of the excuses that Congress can and did give for many years. This Senator used to give them when my constituents would say why am I having to fill out this form, and this and this, and you could say, well, it looks ridiculous to me, but I am not on any committee that has jurisdiction on that, so I do not know what I can do about it, or I will write a letter or something like that. But there was no way of sort of holding me accountable. There was no way of accountability in the Congress, for us to say to an agency, here is a form, and now to your agency particularly, here is a form, it has the number, we do not think it is necessary or here are the reasons, why did you approve that? Now there is not the excuse of hundreds of committees and hundreds of ways. We can pinpoint responsibility through your office, there is a

place where the buck stops. There is a place where we have a responsibility to see whether we are complying with that or not.

I understand that there is a dispute over whether federally sponsored disclosure and labeling requirements are subject to the requirements of the Paperwork Reduction Act. These are cases where the government mandates one private party maintain or provide information to another private party. Now, what is your interpretation of the statute?

Mr. PLAGER. I see nothing in the statute, Mr. Chairman, that makes a distinction between federally required information collections that are made back to the Federal Government and federally required information collections or disclosure and labeling requirements that are made by a private party to the public generally or for other private parties.

As far as I understand it, the Act applies to both types of federally mandated information activities, and they both come under these procedures.

Senator CHILES. I agree that they are covered. I think our legislative intent is clear on the point. The basic principle is that the government is supposed to check for need and efficacy before it asks people to keep or provide information, and we were very careful and conservative in establishing exemptions to this principle.

I want to visit your written response to the prehearing question regarding how you view the relationship between OIRA's statutory responsibilities to manage information resources and OIRA's present activities to review regulations granted by the two Executive Orders concerning regulatory management, Executive Order 12291 and 12498. There is an allegation that OIRA uses the Paperwork Reduction Act authorities as "an excuse to deny and delay agency regulations." There is the view that the review of regulations under Executive Order should be totally separate from the review of agency conformance to other information policy responsibilities assigned to OIRA by the Act.

First, let me reinforce your observation that the Congress recognized in passing the Act the inexorable linkages between the review of agency justifications of information requests on the public, the review of agency compliance of other information policy responsibilities, and the review of regulations for their burdens on the public.

Our model in 1978 and 1980, of course, was the Carter Administration's Executive Order on improving regulations. I recall that President Carter asked that OMB issue a report card on how well agencies complied with his Executive Order. We intended to link this kind of review with the other OIRA responsibilities. The major reason we intended this was the recognition that the growth of paperwork burdens on the public was coming from new regulations. Another motivation was the recognition that the application of new information technology held the greatest potential for reducing the burdens on the public.

Congress did intend the Paperwork Reduction Act as a regulatory reform measure. We saw linking the integration of information resources management with regulatory review as a strategy to reduce the paperwork burden. But we did draw a line between reg-

ulatory reforms related to information management issues and those which are not.

The regulatory analysis associated with whether the airline or trucking industry should be deregulated, for example, was specifically pointed out as deregulatory reform issues not within the scope of review processes authorized by the Act.

The Reagan Administration adopted this linkage Congress intended early and used it aggressively. The line intended has been the subject matter of numerous oversight hearings, both by this Committee, the House Government Operations Committee, and others. It was a significant issue in the reauthorization process over two Congresses, and the '86 amendments included language which I helped put together which reaffirms the original line and enables Congress to provide continuing oversight.

The language of section 3520 of the Act regarding the authorization of appropriations was amended to require a separation account for activities OIRA is authorized by the Act to undertake. OIRA activities undertaken which are not authorized by the Act have to obtain funding from another account.

As you indicated in your prehearing questions, procedures have been set up within OMB to account for the source of funding for OIRA activities. Those activities which are not authorized by the Act must get funding elsewhere, presumably from OMB's overall appropriations. Can you describe what those procedures are?

Mr. PLAGER. Yes, sir. As I understand the procedures that have been established pursuant to the concerns that you have just been describing, what happens is that the OIRA staff periodically review their workload, and assess the extent to which their workload is attributable to Paperwork Reduction Act responsibilities, and the extent to which that workload is attributable to other responsibilities assigned to OIRA. This allocation is then used as a way of determining the extent to which paperwork reduction activities are attributed to the earmarked part of OMB appropriations and the extent to which the balance of the OIRA activities are attributed to funds not part of the earmarked funds. That process is in place and is a full-faith, *bona fide* attempt to be responsive to the concerns that you have expressed and to separate out the Paperwork Reduction Act activities from all the other activities of the Office.

Senator CHILES. Do you believe that complying with these procedures will enable OIRA to demonstrate which regulatory review activities are related to the responsibilities authorized in the Paperwork Reduction Act and which are not?

Mr. PLAGER. Yes, sir. From the knowledge I currently have of it, I am led to believe that that is the case.

Senator CHILES. Well, this is an important issue for Congress' consideration of authorizing and reauthorizing appropriations for OIRA. If confirmed, will you provide the Committee as soon as possible with what the present accounting for OIRA's activities in fiscal year 1987 and 1988 are?

Mr. PLAGER. Yes, sir, I would be glad to do that.

Senator CHILES. I would also like to invite you to review these procedures, in light of the congressional intent of the 1986 amendments, and tell me if you see the need for any changes.

Mr. PLAGER. I will do that also, Senator.

Senator CHILES. Would you give us a short description of the information collection budget and the process that OMB and the agencies engage in to put their budget together?

Mr. PLAGER. Yes, sir. The information collection budget is a mechanism designed in many ways to parallel the financial budget mechanism that we use between OMB and the agencies. Under the information collection budget, OIRA gives the individual agencies a target in terms of burden-hours imposed on the public for their total information collection burden for the fiscal year in which those information collections are to be conducted. OIRA works out with the agency an agreed target and then the agency seeks to conduct its overall collections within that agreed target. The targets are the result of an interactive process between OIRA and the agency and it is the vehicle that is used to carry out the requirements of the Paperwork Reduction Act for overall government-wide reductions in paperwork burden.

As I am sure the Chairman knows, the 1986 amendments require that OIRA seek to reduce the government-wide paperwork burden by certain percentages over the next several years, and it is the information collection budget that provides that overall government-wide oversight process for doing that.

Senator CHILES. What is your view of the ICB process as a management tool to encourage agencies to minimize the paperwork burden?

Mr. PLAGER. I have mixed feelings about it, in the sense that agencies do not take it as seriously as they might. It can become an exercise in numbers. At the same time, I think it is a useful tool for looking at the total paperwork burden government-wide. I think, Senator, that the new process by which OIRA will be getting feedback from the public as to the individual paperwork burdens will at least help OIRA to see whether this budget is just numbers or whether it really does reflect the actual burdens that are out there. I think it will be interesting in the period ahead to see the extent to which the current information collection budget holds up, in light of the public feedback that OIRA will be getting under the new procedure.

Senator CHILES. Well, do you envision making any changes in the information collection budget?

Mr. PLAGER. Not until I see what this new feedback provides, unless there are more things in it that I do not yet have information about.

Senator CHILES. A major part of the agreement between the administration and Congress behind the 1986 amendments to the Act was commitment to the principle that OIRA would stick to open and timely decisions on regulatory as well as other kinds of reviews.

There were a number of sunshine amendments to the Act, and OMB agreed to administratively implement the sunshine procedures to make OMB's review of regulations under the Executive Order more accessible to the public. There was criticism of the secrecy of some of the decisions of OIRA prior to 1986. How well do you think the changes have worked, and do you see the need for any other changes?

Mr. PLAGER. My understanding of the procedural changes, Senator, is that they have instituted significant improvements in the openness of the OIRA process. They are working and seem to be widely accepted, and at the moment I do not have in mind any particular changes that are called for, but I will certainly be attentive to that.

Senator CHILES. Well, I think it is important to cast the right symbol for openness and timeliness. I think you ought to be perceived as willing to make some of the controversial decisions that you will get involved in right out in the open. I also feel if you do that in a timely and open manner, you will get better support from the Congress in some of those decisions that you make.

Mr. PLAGER. Yes, sir.

Senator CHILES. The 1986 amendments mandated OIRA to report to Congress within a year upon the feasibility and means of enhancing public access, including access by electronic media to the decision process surrounding agency justification and OIRA review of paperwork requirements. Nothing has come from this mandate. I sponsored the language, and my hope was that OIRA would seize the opportunity to demonstrate how new information technology could be used to expand meaningful public participation.

As it stands now, agency justifications, written public comment and the Administrator's decisions are publicly available in an OMB library, but you have to come to Washington to read the documents and you have to go through a security clearance to get into the OMB Library. If there is an office that ought to be able to use some of the new information technology out there, it ought to be OIRA.

For example, why could people not just call in with their personal computer and gather in what everybody else is saying about a paperwork requirement up for review? I think this has been a missed opportunity, but it is not too late. I would invite you to try to respond to this reporting mandate. If you have any comments, I would be pleased to hear them.

Mr. PLAGER. Yes, sir. The report, I understand, is overdue, but I understand that it is in process and, if I am confirmed, one of the first assignments I will take on will be to find out where that report which we owe you is and how to get it up to you.

I think the more fundamental issue is the one you raise as to whether we can use this technology—this new technology for which OIRA has responsibility—to open up and to encourage public participation in OIRA's review procedures. I would very much support that. It seems to me that we ought to be looking at ways in which public terminals which are available in public libraries throughout the country, at universities, and now with many people having PC's that can be accessed, that can access other equipment through modems and all the other technology that is available, we ought to be on-line with many of our decision processes, with many of our records. People ought not to have to come to Washington to look at what is in the docket, the public docket. I absolutely agree with you.

Within the constraints imposed by cost and availability of technology, I would like very much to see OIRA pursue the process of making available nationwide, if you will, through this public termi-

nal process and access process the information to which the public is certainly entitled.

Senator CHILES. The National Institutes of Health has been talking to us and telling us that they have now set up processes whereby doctors with modems can access all of the latest medical research findings of NIH, without having to get a copy of the New England Medical Review or something else, they can simply access that. It certainly seems that we ought to be able to try to do that.

Mr. PLAGER. Yes, my son the doctor points that out to me and notes that I need to get into the 20th Century.

Senator CHILES. We wish more doctors were setting up their theses so they would do that. I am distressed to find that less than one-third of the doctors are currently now using the current procedures in cancer research, but at least we are trying to make that information available.

I understand that you are familiar with the Florida demonstration project on research productivity and with plans to expand that and now make it truly a national project. I want to make a point and ask you to comment.

I view the essential question presented by the Florida demonstration to be what is the appropriate Federal role in managing sponsored research. That is a fundamental and important regulatory question. There is a real need for management leadership if some of the results of the demonstration are to be implemented across government research agencies. We intended the Paperwork Act to strengthen the "M" in OMB. We wanted to enable OIRA to take on a pro-active management style as well as meet its responsibility to check on agency compliance within the Act's requirements.

I would like your comments on what role you believe the Administrator of OIRA could take in exercising this kind of leadership for federally sponsored research. As you know, but perhaps for others here, the Florida demonstration project is trying to make a little modicum of sense with the universities getting multiple research grants and finding that their paperwork is sort of taking up much of the funds of that grant, tremendous duplication, tremendous overlapping, and the purpose of it was to see how we could reduce that and improve accountability.

I strongly believe that there has got to be and should be valid, strong accountability of the government's and the people's tax dollars, but at the same time we have set up a situation in such a hodge-podge that we were wasting the money without getting accountability.

Mr. PLAGER. Your point I think, Mr. Chairman, is absolutely correct and very well taken. My own view is that the Federal Government needs to be very careful in its pursuit of fiscal accountability and management uniformity, to be sure that we do not impose on activities requirements that make sense for other kinds of activities but that do not make sense for the particular activities on which we are imposing them. I think an excellent example of where we seem to have done that is the sponsored research area. There clearly are a number of important distinctions between the way sponsored research organizations, such as universities, go about the business of carrying on those activities and the way commercial establishments go about the business of contracting with

the Federal Government. The Federal requirements clearly have to be tailored differently.

The Florida demonstration project is an excellent illustration of how we can maintain accountability and responsibility and at the same time reduce both the amount of resources that are going into unnecessary management activities and achieve more results for the Federal dollars that are going into that sponsored research.

I will not go into the details of the various things that have been demonstrated by the project, because I know you are familiar with them. From the viewpoint of what the Administrator of OIRA should be doing, my view is that, given the very positive results of that demonstration project, OIRA should be aggressively supporting its extension to other States, to other universities, to other areas where sponsored research is going on.

I believe that already is in process and there are plans being made to extend that project.

I think this is an excellent illustration of where we have, in our zeal for assuring accountability, imposed management burdens that just do not make good sense in the context of that activity.

Senator CHILES. We talked about some of the provisions of the Paperwork Act which are intended to encourage public participation in the decisions that the agencies and the Administrator make. Certainly encouraging public participation in paperwork decisions the government makes daily was one of our basic objectives in drafting the statute.

One of my biggest disappointments is over my belief there is still not enough public involvement going on. I am convinced that getting more public participation is critical to keeping the discipline and values we put into the Paperwork Act alive and well. You have already told us that you will try to go out and take an aggressive, affirmative program to solicit more public participation, and I certainly encourage you to do that. I think that is tremendously important.

Mr. PLAGER. You and I, Senator, come from the State that originated government in the sunshine. I think it is a fundamental principle and I am delighted to have an opportunity to further it in the Federal context.

Senator CHILES. I want to finish with a final suggestion to you. Section 3514 of the Paperwork Reduction Act is the responsiveness to Congress section. It requires an annual report and it establishes a number of areas requiring specific mention. The section does something else. The mandate is for the Director of OMB to keep the Congress and its committees fully and currently informed, submit a report annually and at such other times as the Director determines necessary. It is the mandate to report at such other times as the Director determines necessary that I want to emphasize here.

When we drafted that provision in 1980, we had in mind that the Administrator's job to see to it that the agencies meet their responsibilities under the Act would not be easy. We envisioned occasions when agency resistance or neglect might merit a report to Congress and OIRA's authorizing committee that could not wait for an annual report.

Now, this Committee had the same thought in mind in 1984 during consideration of reauthorizing appropriations for OIRA, and in its report to the 99th Congress the Committee specifically stated the expectation that the Director would promptly report to Congress instances where agencies did not renew their approval for information requirements contained in regulations, despite being informed by OIRA that they had a statutory responsibility to do so. That was part of this Committee's answer as to why there should not be a conflict between agency requirements under the Administrative Procedure Act and the rights afforded citizens under the Paperwork Reduction Act. We anticipated that the Director of OMB would report such incidents to us if they occurred.

This discretionary authority to report to Congress and OIRA's authorizing committees has never been used. With the hindsight of 8 years, I think that was a mistake. For example, when the IRS refused to follow the Administrator's interpretation of the law in 1981, I believe a report to Congress at that time, a prompt report would have been helpful. It took 4 years to correct the problem that followed.

Similarly, there have been occasions when agencies have just ignored the statute. I think the view of these occasions is that what the agency is doing is too important to be bothered by paperwork reduction requirements that the public be given a chance to participate, and an assurance that the best alternative has been chosen. Again, I think the Administrator should report these incidents to Congress.

Let me say that I think I know why this reporting mandate has not been used. The Executive Branch officials, particularly those in the Executive Office, want to be team players. They do not want to appear as tattle-tales to Congress. The Administrators of OIRA have preferred to try to work it out within the administration.

That is fine, but the reality of Washington is that the agencies often come to their authorizing committees to get around the Act. So do their constituencies. That is part of the "iron triangle" that makes up Washington. They do not mind tattling on OMB. An Administrator of OIRA I think has to be tough if he wants to meet that kind of resistance, and when a serious challenge to the Act is mounted, when outright violation of the Act occurs, despite warning, I think the Administrator would be smart to do what Congress contemplated in the discretionary reporting requirement and formally tell Congress what is going on.

I suspect that if you are confirmed you might get an opportunity to set a precedent, to use this authority in the responsiveness to Congress section of the Act. My advice to you would be to do so. My view, as I have mentioned to you, is that a tough Administrator who makes tough decisions in the name of the Act will get the kind of support you will need in Congress, but you will not find too much interest for an Administrator who is unwilling to stand up for what the Act requires or gets beat up easily by the agencies and their constituencies.

Those of us behind the Act were trying to pinpoint accountability and make visible some of the mundane paperwork battles between agencies that usually get buried in the bureaucracy. Getting the debate out in the open is part of what the Act is all about.

Again, I think it would be wise in some of these debates if it was the Administrator, rather than the affected constituency, that was the first one to tell Congress what was going on.

I see Bob Bedell in the audience. He has been through confirmation here. We know that he has now left the Office of Federal Procurement Policy to go to other fields. We certainly wish him well in that activity.

I may have a few other questions and maybe some of the members have, so we will keep the record open. The Committee will accept written statements on this nomination and written questions and make them part of the record.

We hope to move on your confirmation very soon and we wish you good luck and we certainly look forward to meeting with you.

Mr. PLAGER. Thank you very much, Senator. May I just say that I want to thank you for the opportunity to appear before the Committee. I would like, for the record, to note that the Committee staff—the lead persons, both for the majority and minority—conducted what I consider a very careful and courteous examination of my record and my responses. Your staff has been particularly helpful in insuring my attention to the concerns that you have, and I am proud to have had the opportunity to appear before you; because in particular not only do we share a home State, but you have been the leading person, the leading member in the Senate, in bringing about the Office of Information and Regulatory Affairs.

For the record, but also genuinely, I want to take the opportunity to thank the President for expressing the confidence in me that he has by nominating me, and Director Miller for the support that he not only has given me in the past but that he promised today to give in the future and, of course, to Senator Quayle for appearing here and introducing me.

Again, I appreciate this opportunity.

Senator CHILES. We thank you.

The Committee will stand in recess at the call of the Chair.

[Whereupon, at 11:15 a.m., the Committee was recessed, subject to call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Dan Quayle

U.S. Senator

June 14, 1988

STATEMENT OF SENATOR DAN QUAYLE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON THE NOMINATION OF S. JAY PLAGER
TO THE POSITION OF ADMINISTRATOR OF THE OFFICE OF
INFORMATION AND REGULATORY AFFAIRS OF THE
OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman. This is the first time that the nominee to the position of Administrator of the Office of Information and Regulatory Affairs is required to come before the Senate for confirmation, and I am proud to give my strong recommendation supporting the nomination of Jay Plager to this position.

Very simply, Jay is the type of person we need to attract to Federal government service, and I am pleased that we will have the benefit of his talents and expertise in such an important position. Jay's broad experience in the Federal government and in the field of law prepare him well for

this position of great trust, judgement and responsibility. Jay has proven himself time and again to be a competent, effective administrator and his credentials and accomplishments speak for themselves.

Currently, Jay Plager is the Associate Director for Human Resources, Veterans and Labor of the Office of Management and Budget. His responsibilities include the supervision of the budgetary programs and policies for the Department of Health and Human Services, the Department of Education, the Department of Labor, parts of the Department of Agriculture, the Veterans Administration, and 22 smaller agencies.

Prior to his present appointment in OMB, Jay served as the Counselor to the Under Secretary of Health and Human Resources for a year. There his activities related to policy and program development. His work spanned a wide range of issues, and his efforts helped improve the Food and Drug Administration's process for making experimental drugs available to desperately ill people. He also co-chaired the Secretary's Task Force on Medical Liability and Malpractice.

Before turning to public service Jay worked at Indiana University where he has been a professor of law since 1977, and was Dean of the Law School from 1977 to 1984. While Dean of the Law School, Mr. Plager instituted a Law School Office of

Research and Development and established an Office of Law School Development. He initiated and supervised an expansion and revision plan for improving the physical plant of the law school, as well as a major rebuilding and restructuring of the faculty and a reassessment and revision of the curriculum.

While in Indiana Mr. Plager served on the Board of Directors of the Indiana Continuing Legal Education Forum and on the Board of Directors of the Indiana Bar Foundation, and was a member of the House of Delegates of the Indiana State Bar Association. He is also an active member of the Association of American Law Schools, for which he has served on many committees and accreditation teams.

Mr. Plager has taught or has been a visiting scholar at six Universities besides Indiana, including Stanford and Cambridge. Instructing for nearly 30 years, he has been a pioneer in teaching law students to appreciate and use the social sciences. Mr. Plager has published numerous scholarly works on a diversity of subjects. He has a special interest in administrative law, including land use and environmental issues.

Mr. Plager's impressive background in the Federal government and in his academic career clearly exemplify his unique qualifications, and I believe that he is one of very few

individuals capable of assuming the role of Administrator of OIRA. The power of regulation has in a certain sense become the symbol of government in modern democracies. It is a power that should be used sparingly and wisely. I am confident that Jay Plager has the breadth of experience and the judgement to be a fair and effective administrator at OIRA.

OIRA has a wide variety of statutory responsibilities from information resource management and statistical policy to carrying out the Paperwork Reduction Act and executive regulatory oversight. I am convinced that his accumulated expertise and practical knowledge will provide Jay Plager the tools to successfully meet the challenges inherent in this position. I urge the Committee to favorably report this nomination.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** S. Jay Plager
(Sheldon Jay Plager)

2. **Position to which nominated:**

Administrator, Office of Information & Regulatory Affairs
Office of Management & Budget

3. **Date of Nomination:** April 18, 1988

4. **Address:** (List current place of residence & office addresses.)

Permanent Residence
2728 Pine Lane
Bloomington, Indiana 47401

Local Residence
2555 Pennsylvania Avenue, N.W.
Apt. 504
Washington, D. C. 20037

Office
246 Old Executive Office Building
Washington, D. C. 20503

5. **Date and place of birth:**

16 May 1931; Long Branch, New Jersey

6. **Marital status:** (Include maiden name of wife.)

Married, Ilene Hinda Nagel

7. **Names and ages of children:**

Anna Katherine Plager (Nye), 35
David Alan Plager, 31
Daniel Tyler Plager, 28

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Long Branch Senior High, Long Branch, New Jersey,
1945 - 1948, high school diploma.
University of North Carolina, Chapel Hill, N.C.,
1948 - 1952, A.B., 1952.
University of Florida College of Law, Gainesville,

Florida, 1955 - 1958, J.D., 1958.
Columbia University, New York, New York
1959 - 1960, LLM, 1961.

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

See attachment A.9.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above:

Consultant on a National Airport Noise Abatement Program, U.S. Environmental Protection Agency, 1974-1977.

Chair & Project Director, Illinois Task Force on Noise, Illinois Institute for Environmental Quality, 1974-1977.

Member, Federal Hearing Panels on a national noise abatement program, Office of Noise Abatement and Control, U.S. Environmental Protection Agency, 1971.

Member, National Air Pollution Manpower Development Advisory Committee, U.S. Environmental Protection Agency, 1971-1975.

Special Counsel, Northeastern Illinois Metropolitan Area (Metropolitan Chicago) Planning Commission, 1965-1967.

Member, City of Urbana (Illinois) Planning Commission, 1966-1970.

Chair, earlier member, City of Gainesville (Florida) Planning Commission, 1962-1963.

Counsel to the Florida Department of Water Resources, 1960-1961.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

I currently hold the rank of professor of law (with tenure) at Indiana University. From time to time in the past I have served as consultant to various private and governmental clients; since coming to work at OMB I have terminated all active consulting activity.

12. **Memberships:** List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.

See attachment A.12.

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Unsuccessful candidate for County Committeeman, Urbana, Illinois (1965(?)).

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

No formal offices; member of Republican Party.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 10 years.

I do not have available prior years checks and records. To the best of my recollection, political contributions of $50 or more were:

1984 -- Rick McIntyre (Congressional) -- $100

Annually since about 1985:
Dick Lugar (Senate) $500
Dan Quayle (Senate) $100

1987 -- Republican Party -- $100
1987 -- Trent Lott -- $100

(Miscellaneous small contributions over the years which I believe were all under $50.)

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Holloway Fellow, University of North Carolina
Phi Beta Kappa, University of Florida
Phi Kappa Phi, University of Florida
Order of the Coif, University of Florida
Editor-in-Chief, Law Review, University of Florida
Charles Evans Hughes Fellow, Columbia University

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

See attachment A.15.

16. **Speeches:** Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

I believe that my recent experience in a federal executive agency (HHS) and then as a member of the Executive Office of the President (OMB), coupled with my background in administrative law and governmental regulation and administration were considered in my selection to be Administrator of OIRA.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

See answer in 17(a) above.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

See item B.3, below.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association, or organization?

Since 1977 I have been a tenured Professor of Law

at Indiana University, Bloomington, Indiana. When I entered full-time Federal service in 1986, I did so under an Intergovernmental Personnel Act (IPA) transfer. This meant in effect that I continued as a state employee (Indiana), detailed to the Federal Government, for which the Federal Government made reimbursement payments to Indiana University.

I have agreed that, upon confirmation, I will terminate my IPA arrangement, take an unpaid leave of absence from Indiana University, and become a regular Executive Service employee. Since I am tenured, under Indiana University rules I retain the right to resume my position as Professor of Law upon expiration of my Federal service.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

Yes; see item B.3, above.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

See item B.3, above.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None, other than as described in B.3.

3. Describe any business relatiohship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None, other than as described in B.3.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any

legislation or affecting the administration and execution of law or public policy.

I have from time to time represented clients, mostly local governments, concerned about environmental problems. I have terminated all such representations since coming to the Federal Government.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

At the time I entered Federal service, and in each change of assignment since then, we have adopted the following arrangement:

(1) With regard to matters which directly and materially affect the interests of Indiana University, I routinely recuse myself. My staff is instructed to refer all such matters to my immediate superior for handling. Unless it is necessary for my protection, I am not informed of the deliberations or outcomes of such matters.

(2) With regard to matters affecting the education community generally, and which affect Indiana University only indirectly or only as part of broad national policy, I do not routinely recuse myself, but may if I feel it appropriate.

This arrangement has been reviewed and approved by the ethics offices both at HHS and the Executive Office of the President. I propose to continue the same policy as Administrator of OIRA.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No, other than a divorce.

4. Have you every been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None.

AFFIDAVIT

S. Jay Plager being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate and complete.

S. Jay Plager

Subscribed and sworn before me this 19 day of May, 1988.

Barbara G. Brown
Notary Public

ATTACHMENT A.9 Employment Record.

FROM	TO	NAME OF EMPLOYER AND SUPERVISOR	ADDRESS	TITLE/ DESCRIPTION	REASON LEAVING
6/84	Present	Indiana University School of Law Dean Bryant Garth	Bloomington, Ind.	Professor of Law	---
(8/87	Present	Office of Management and Budget James C. Miller III	350 Old Exec. Office Bldg. Washington, DC	Associate Director	---)
(6/86	8/87	U.S. Dept. of Health & Human Services Don M. Newman	200 Independence Ave., SW, Washington, DC	Counselor to Under Secty	New Job)
(9/84	6/85	Stanford University School of Law Dean John Ely	Stanford, Ca.	Visiting Scholar	End of term)
(9/84	6/85	University of the Pacific, McGeorge School of Law Dean Gordon Schaber	Sacramento, Ca.	Visiting Professor (part-time)	End of term)
7/77	6/84	Indiana University School of Law V.P. Robert M. O'Neil V.P. Kenneth Gros Louis	Bloomington, Ind.	Dean	Resigned as Dean
(9/80	12/80	On leave at Cambridge University & Rockefeller Foundation Research Center	Cambridge, Eng. Bellagio, Italy	Visiting Fellow	Leave ended)
8/63	7/77	University of Illinois College of Law Dean John E. Cribbet	Champaign, Ill.	Law Professor	Accept Deanship
(9/67	6/68	University of Wisconsin School of Law	Madison, Wisc.	Visiting Professor	End of term)
1/58	8/63	University of Florida College of Law Dean Frank E. Maloney	Gainesville, Fla.	Law Professor	Accept new appt.
6/52	6/55	U. S. Navy Various	Various	Ensign/ Lt. JG	Return to Civilian Life
9/48	6/52	U. S. Naval Reserve (while attending undergraduate school)	Chapel Hill,N.C.	Midshipman	Graduated

ATTACHMENT A.12 MEMBERSHIPS (current)

NAME IN FULL	ADDRESS	TYPE	FROM	TO	OFFICE HELD
Assoc. of American Law Schools	Washington, DC	Professional	1958	present	Various Committees
American Assoc. of University Professors	Washington, DC	Eucational	1958	present	---
Law and Society Assoc.	Denver, Co.	Educational	1965(?)	present	---
American Bar Association	Chicago, Ill.	Professional	1978	present	---
Indiana State Bar Assoc.	Indianapolis, Ind.	Professional	1977	present	Various
Florida Bar Assoc.	Tallahassee, Fla.	Professional	1958	present	---
Order of the Coif	Washington, DC	Educational	1958	present	---
Environmental Law Inst.	Washington, DC	Environmental	1970(?)	present	---
Wildlife Association	Washington, DC	Environmental	1980(?)	present	---
Smithsonian Institute	Washington, DC	Educational	1986	present	---
Phi Beta Kappa	Washington, DC	Educational	1958	present	---
Pi Lambda Phi	NY	Social	1948	present	---

ATTACHMENT A.15

PUBLICATIONS

Books and Monographs

Revised edition, Florida Water Law, 1980 (with F.E. Maloney, R.C. Ausness, and B.D.E. Canter).

Social Justice Through Law -- New Approaches in the Law of Property. Foundation Press, 1970.

Water Law and Administration. University of Florida Press, 1968 (with F.E. Maloney and F.N. Baldwin).

Articles

The Institution of the Private Attorney General: Perspectives From An Empirical Study of Class Action Litigation, 61 Southern California Law Review 353 (1988) (with B. Garth and I. Nagel).

Empirical Research and the Shareholder Derivative Suit: Toward A Better-Informed Debate, 48 Law and Contemporary Problems 137 (1985) (with B. Garth and I. Nagel).

RICO, Past and Future: Some Observations and Conclusions, 52 Cincinnati Law Review 456 (1983) (with I. Nagel).

State Regulation of Nontransportation Noise: Law and Technology 48 Southern California Law Review 1 (1974) (with R. W. Findley).

Legal Implications of the Failure to Meet Drinking Water Standards with Respect to Trace Metals, Proceedings of the 16th Water Quality Conference, 71 University of Illinois Bulletin 135 (1974).

Public Hearings under the Clean Air Act: Administrative Crucible or Polluters' Ploy, Proceedings of the First National Conference on the Clean Air Act 80 (Chapel Hill, N.C. 1973).

Policy, Planning, and the Courts, 37 Journal of the American Institute of Planners 174 (1971).

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Recent Decisions in Planning Law - 1968, 35 Journal of the American Institute of Planners 264 (1969).

The Planning/Land Use Control Relationship: A Look at Some Alternatives, 3 Land-Use Controls Quarterly 26 (1969).

Participatory Democracy and the Public Hearing, 21 Journal of Administrative Law 153 (1969).

Multiple Interests in Riparian Land, Subdivision Platting, and the Allocation of Riparian Rights, 46 Journal of Urban Law 41 (1968) (with F.E. Maloney).

Interference with the Public Right of Navigation and the Riparian Owner's Claim of Privilege, 33 Missouri Law Review 608 (1968).

Some Observations on the Law of Water Allocation as a Variable in Industrial Site Location, 1968 Wisconsin Law Review 673.

Emerging Patterns for Regulation of Consumptive Use of Water in the Eastern United States, 43 Indiana Law Journal 383 (1968) (with F.E. Maloney).

Diffused Surface Water: Scourge or Bounty, 8 Natural Resources Journal 72 (1968) (with F.E. Maloney).

The XYZ's of Zoning, Planning 271 (ASPO 1967).

Water Pollution - Attempts to Decontaminate Florida Law, 20 University of Florida Law Review 131 (1967) (with F.E. Maloney and F.N. Baldwin).

Florida's Ground Water: Legal Problems in Managing a Precious Resource, 21 University of Miami Law Review 751 (1967) (with F.E. Maloney).

The Spouse's Nonbarrable Share: A Solution in Search of a Problem, 33 University of Chicago Law Review 681 (1966).

The Politics of Planning for Urban Redevelopment: Strategies in the Manipulation of Public Law, 1966 Wisconsin Law Review 725 (with J. Handler).

Florida's Lakes: Problems in a Water Paradise, 13 University of Florida Law Review 1 (1960) (with F.E. Maloney).

Severance Damage in Eminent Domain Proceedings, 10 University of Florida Law Review 1 (1957) (with A.V.Kendall).

Florida's Streams - Water Rights in a Water Wonderland, 10 University of Florida Law Review 294 (1957) (with F.E. Maloney).

Other Published Studies

Report of the Task Force on Medical Liability and Malpractice. Department of Health and Human Services, Washington D.C. 1987 (co-chairman).

Controlling Waterfront Development. Public Administration Clearing Service, Studies in Public Administration No. 30 (Florida 1968) (with F.E. Maloney).

Social Elements and Relationships within Urban Systems: Implications for Action and Research Programs -- The Role of Law. Center for Urban Studies, University of Illinois, Discussion Paper Service, No. 7 (1968).

Control of Noise from Motor Vehicles, Report of the Task Force on Noise. HEQ Doc. 74-42, 1974 (Chairman of Task Force and Project Director).

PREHEARING QUESTIONS
S. JAY PLAGER, NOMINEE FOR ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS

I. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Were any conditions, expressed or implied, attached to your nomination to be Administrator of the Office of Information and Regulatory Affairs (OIRA)?

Answer:

No.

2. Have you made any specific commitments with respect to the basic policies and philosophy which you will follow while Administrator of OIRA? If so, please describe these commitments.

Answer:

No.

3. To your knowledge, did persons representing interests subject to OIRA regulation actively support or endorse your appointment? If so, please provide details of those activities?

Answer:

No, not to my knowledge.

4. Is there any issue or rulemaking activity under consideration by OIRA, or any which may come under consideration, from which you may have to disqualify yourself? If so, please explain.

Answer:

I intend to recuse myself from participation in any particular matter which might have a direct and predictable

effect on Indiana University. I do not expect to recuse myself from issues affecting education generally, or universities generally, unless an issue appears to be a matter which would affect Indiana University distinctly (i.e., in a manner different from other similarly situated universities).

My wife, Ilene H. Nagel, is a member of the United States Sentencing Commission, a position which is a Presidential appointment with Senate confirmation. The work of the Commission does not usually involve matters which would come before the Administrator of OIRA. Both my wife and I will be sensitive to the issue, however, to ensure that no conflicts of interest or appearance thereof occur.

I know of no other such matters.

5. Do you have any interest in any corporation, partnership, association, or other entity whose interest may be affected significantly by OIRA administrative rulemaking determinations?

Answer:

No; however, under Indiana University rules, upon completion of my Federal service, including service if confirmed as Administrator of OIRA, I retain the right to return to the University as a professor of law.

II. ROLES AND RESPONSIBILITIES OF THE POSITION OF OIRA ADMINISTRATOR

1. What do you believe are the most important functions and responsibilities of the position to which you are nominated?

Answer:

The formal functions and responsibilities of this position are set forth in statute and in Executive orders. The Paperwork Reduction Act of 1980, as amended (44 U.S.C. chapter 35) describes the functions of the Office. In broad sweep, these could be summarized as:

- to minimize the burden of Federal paperwork on the public (including individuals, businesses, and State and local government);

- to minimize the cost and maximize the usefulness of information collected, maintained and disseminated by the Federal government;

- to coordinate and integrate Federal information policies, including ensuring the privacy and confidentiality of Federal information; and

- to oversee the acquisition and use of information technology (computers and telecommunications) to assure that this important technology is used efficiently and in a manner that improves the operation of government.

In addition, pursuant to Executive Order Nos. 12291, entitled Federal Regulation, and 12498, entitled Regulatory Planning Process, OIRA has been assigned the important function of ensuring that agency regulatory actions are consistent with law and policy and conducted so as to achieve the agencies' statutory purposes while minimizing the cost to the public.

Operationally, I believe one of the most important responsibilities of the Administrator with respect to these executive oversight functions is to carry them out fairly and efficiently, consistent with the law governing OIRA and the law governing the substantive responsibilities of the agencies. In addition, I see the task as assuring that the review of information collection and regulatory proposals is thoughtful and complete, with proper opportunities for all affected parties to be heard, and with all important issues fully aired.

2. What contributions do you feel you can make to the Office of Management and Budget (OMB) as Administrator of OIRA?

Answer:

I feel I can contribute both skill and energy to the Office. I have long been interested in governmental administration and management, and have considerable experience in regulatory affairs. Having come recently to OMB from a line agency, I am sensitive to the problems of managing programs within a complex governmental framework. At the same time, my experience at OMB has shown me the importance of executive oversight and coordination of interagency activity. I believe this background and experience equip me to fulfill the

obligations and responsibilities of the Office, consistent with the expectations of the Congress, the President, and the Director of OMB. I am fully prepared to devote my energies to the performance of these responsibilities.

3. How do you view the relationship and responsibility of the Administrator of OIRA to the: (a) Director of the Office of Management and Budget; (b) the President; (c) Executive branch agencies; and, (d) independent regulatory agencies?

Answer:

The relationship and responsibility of the Administrator of OIRA to the OMB Director, the President, and the Executive branch agencies, including the independent regulatory agencies, can be summarized briefly: serving as the President's appointee and agent, and accountable to the Congress and the public, the Administrator of OIRA provides executive oversight and guidance to all Federal agencies subject to the Paperwork Reduction Act and Executive Order Nos. 12291 and 12498.

(a) The OMB Director -- The authorities and responsibilities contained in the Paperwork Reduction Act are assigned to the OMB Director. According to the Act, however, the OMB Director delegates these authorities to the Administrator of OIRA. Nonetheless, the OMB Director retains the responsibility for the proper administration of these functions. In addition the OMB Director has assigned to the Administrator of OIRA various functions under Executive Order Nos. 12291 and 12498. I view the relationship between the OMB Director and Administrator of OIRA as a vital factor in the performance of OIRA's functions -- the Administrator must have the full support of the OMB Director in order to be effective.

(b) The President -- Under the Constitution, the President, as Chief Executive, is to manage the Executive branch; take care that the laws are faithfully executed; supervise and guide his appointees in the exercise of their executive functions; and require their written opinions on matters within the scope of their responsibilities. Congress may properly specify by statute the executive officer with primary legal responsibility for implementing by regulation or otherwise a particular legislative policy, but it cannot relieve the President of his constitutional duties, express or implied, to oversee agency execution of

Federal law.

The President's responsibility is to oversee the effective management of the government as a whole. The Administrator's responsibilities to the President are to perform these functions in the areas of the Administrator's duties. The Administrator of OIRA, as the President's appointee, can be removed by the President if he does not believe the Administrator is performing satisfactorily.

(c) Executive Branch Agencies -- The Paperwork Reduction Act and OIRA's related information resources management and statistical policy responsibilities apply to virtually all Executive branch agencies, including the independent regulatory agencies. Executive Order Nos. 12291 and 12498 do not apply to an "independent regulatory agency."

As I understand it, the Paperwork Reduction Act establishes the Administrator as the reviewer of agency compliance with the requirements imposed upon them by the Act. The Administrator's role, therefore, is to operate as a checkpoint; to see to it that agencies meet the policy requirements of the Paperwork Reduction Act. The Act makes clear, however, that if an agency does not meet the statutory standards, the Administrator has the power to say no. The Administrator's decision is a matter of public record, and subject to public and congressional scrutiny.

(d) Independent Regulatory Agencies -- Under the Act, the only difference between the Administrator's relationship to the independent regulatory agencies and other agencies in the Executive branch is that the independent agencies may override a negative decision of the Administrator. The responsibility to ensure that the activities of these independent regulatory agencies are consistent with the goals and policies of the Paperwork Reduction Act does not change.

4. How do you view the relationship between OIRA's statutory responsibilities to manage information resources and OIRA's present activities to review regulations under authority granted by Executive Orders 12291 and 12498?

Answer:

In order to carry out its statutory responsibilities to manage information resources, OIRA must review and evaluate proposed regulations prepared by the agencies subject to the Paperwork Reduction Act. Review under the Act focuses on

information management issues, issues often presented in the context of regulatory proposals. Executive Order Nos. 12291 and 12498 create additional responsibilities for OIRA as part of its regulatory review process. They require that OIRA evaluate regulations submitted by agencies subject to the Executive orders to determine whether the proposed regulations are consistent with the regulatory principles set out in those orders.

These oversight responsibilities of the Administrator of OIRA are broad, complementary, and overlapping. A large portion, I am told roughly 75 percent, of the draft regulations submitted for OIRA's review under Executive Order Nos. 12291 and 12498 contain or mandate a collection of information subject to OIRA's Paperwork Reduction Act review authority. In creating the Office, Congress recognized the inextricable linkage between regulatory and paperwork requirements both in the Paperwork Reduction Act and in the naming of the Office.

Moreover, in reviewing agency collections of information, OIRA of necessity must look beyond the information collection provisions to the underlying regulatory purpose, as well as related statutory, budgetary, and broad policy mandates. In short, proper review of paperwork burdens cannot be confined to the end product -- the collection of information -- but must include a careful understanding of the underlying source from which the collection of information springs, be it a statute, regulation, or other policy guidance.

5. The Administrator is statutorily charged with responsibilities for coordinating federal statistical policies and procedures.

(a) What challenges, both long-term and short-term, do you foresee in exercising these duties?

(b) How will you balance the mandate to reduce the burden of information collections with the need to ensure the accuracy of statistical data and the validity of the methodologies employed?

Answer:

OIRA's statistical policy and coordination functions under the Paperwork Reduction Act include long-range planning to improve Federal statistical programs; coordination of statistical activities through budget review and other means; development of principles, policies, standards, and

guidelines for the conduct of the government's statistical work; and evaluation of statistical programs and agency performance.

(a) I see several challenges in carrying out these responsibilities. One is to assure that the major systems from which the government derives statistical information are designed so that they generate accurate information and so that they can accommodate new information needs that may arise on relatively short notice -- for example, the current need for information about the spread of AIDS.

A second significant challenge is to maintain a high level of public confidence in and support for the Federal government's statistical work. The statistics compiled by the government are often an important element in deciding allocations of resources, in establishing regulatory programs and in making judgments about public policies. Because these statistics may have significant consequences for individuals, it is essential that people have confidence that they are accurate and unbiased.

(b) In practice there should be relatively few situations where reducing burden and maintaining data quality have to be traded off against each other. In most instances the two goals can be achieved simultaneously. For example, choosing a more efficient sample design for a statistical survey or making use of a more effective method of data collection, such as computer-assisted telephone interviewing, can both reduce response burden and also improve the quality of the resulting statistics. I believe it is consistent with OIRA's broadly-defined statistical policy and coordination functions to encourage and support both burden reduction and quality improvement together.

III. PAPERWORK REDUCTION ACT

1. How would you describe the fundamental purposes of the Paperwork Reduction Act?

Answer:

The Paperwork Reduction Act provides a framework for rationalizing the Federal government's collection and use of information. Its basic purposes, as I understand it, can be captured in the concept of sound information resources management. The Act establishes structures and processes in OMB and, more importantly, in the agencies, to ensure efficient and responsible management of governmental information and related resources, including the technology

used to collect, process, and disseminate it. As I read the Act, that concept of sound management has several aspects:

- First, sound management ensures that agencies have and make good use of the information they need to discharge their responsibilities. It is widely recognized today that government is an information intensive enterprise, and that fact is critical to understanding the purposes of the Paperwork Reduction Act.

- Second, sound management entails consideration of efficiency - to make sure that the taxpayer gets maximum return on investment.

- Third, sound management of Federal information resources requires that agencies concern themselves with the burden on the public of their information activities.

- Finally, beyond the questions of internal and external efficiencies and effectiveness, responsible information resources management requires taking account of other important legal and policy considerations, including information confidentiality and personal privacy.

2. Please describe what roles the Administrator of the General Services Administration (GSA) and the Administrator of the Office of Federal Procurement Policy (OFPP) play in assisting the Administrator of OIRA to carry out the objectives of the Paperwork Reduction Act?

Answer:

The roles of the Administrators of the General Services Administration, the Office of Federal Procurement Policy, and the Office of Information and Regulatory Affairs with respect to the management of Federal information resources are separate, yet mutually supportive.

GSA is charged under the Federal Property and Administrative Services Act, as amended, with, inter alia, managing the acquisition of computers and telecommunications. Under the recent amendments to the Federal Records Act, it also has certain records management responsibilities. It is GSA that issues through the Federal Acquisition Regulations and the Federal Information Resources Management Regulations, much of the procedural guidance that governs related agency actions. Thus GSA is an important part of a triad that consists of itself, the National Bureau of Standards (setting standards and providing technical assistance), and

OIRA (in its policy oversight role).

These three agencies must work closely together to assure that overall strategies are coherent and consistent. Further, the Paperwork Reduction Act specifies two areas in which GSA is to assist OIRA: the conduct of triennial reviews of agency information resources management activities, and the preparation of the government-wide five year plan for ADP and telecommunications.

The Office of Federal Procurement Policy has responsibility for the overall direction of procurement policy. OIRA and OFPP interact in two important ways. First, the two offices need to work closely in pursuit of their shared objective of streamlining the procurement process. The information collection and regulatory review processes can be important instruments in that effort. OFPP participates with OIRA staff in assessing the paperwork burdens of all procurement regulations and policies submitted to OIRA for review under the Paperwork Reduction Act. Second, since information technology, for which OIRA has oversight responsibility, must be procured under general procurement policy for which OFPP has overall responsibility, the two offices again interact cooperatively.

3. The 1986 Amendments to the Paperwork Reduction Act required that all funds appropriated to OIRA be spent only for purposes authorized by the 1980 Act. What steps will you take to ensure that this requirement is followed?

Answer:

It is my understanding that procedures have been adopted to keep track of the allocation of staff time and related resources between, on the one hand, duties assigned by the Paperwork Reduction Act, and, on the other hand, all other duties. Accordingly, Paperwork Reduction Act activities are charged to the funds appropriated to OMB specifically for those purposes, and all other OIRA activities are charged to the general funds appropriated to OMB. I intend to ensure that these procedures continue and are fully carried out during my tenure as Administrator.

4. A primary objective of the Paperwork Reduction Act seeks to improve and integrate federal information resources management while reducing the burden of the federal government's information needs. How do you intend to fulfill this mission?

Answer:

The question suggests the potential tension between improving and integrating federal information resources management and reducing the burden that government activities place on the economy as a whole. While there are situations where these important goals may be in conflict, they are often complementary.

Standardizing Federal agency systems and procedures can result in internal efficiencies while also reducing burden on the public. For example, a single, standard employment application allows agencies to simplify and standardize their procedures, while at the same time simplifying the task of the applicant who may be applying for more than one job. Executive agencies are beginning to reap the benefits of standardized procedures and forms through the use of standardized systems, which are less expensive to operate and maintain than individualized systems.

Standardization obviously requires some compromises -- the data required on a multi-purpose application form may be more than any single agency would need -- but the benefits both to the agency and to the applicant are demonstrable. Standardized procurement and financial systems provide similar opportunities for improving the management of Federal information resources in a way that reduces the burden on the public.

Another way to improve the management of Federal information resources while reducing burden on the public is to make greater use of technology in the information collection process. For example, when providers of data to the government already have the data in a computer for their own purposes, the burden of providing it in electronic form often is far less than translating it to paper. And the elimination of the expensive and time-consuming process of keyboarding data can reduce agency costs as well, while the errors introduced through the translation process can be virtually eliminated.

5. The Paperwork Reduction Act defines the term "burden". What methodology is most appropriate for determining an accurate estimate of "burden hours".

Answer:

Under the Paperwork Reduction Act, OIRA is required to reduce paperwork burden on the public. The unit of

measurement OIRA employs is the paperwork "burden hours" imposed on the public, which measures the number of hours that individuals, businesses and institutions spend to comply with Federal recordkeeping and reporting requirements.

No single method has proven best for determining "burden hours." While OIRA believes that agency estimates of burden have improved over the years, such estimates are by their nature somewhat subjective and imprecise. It is for this reason, I believe, that OIRA recently amended its paperwork clearance regulation (5 CFR 1320). The new regulation requires agencies to indicate on each collection of information (or any related instructions) the average burden hours per response, as estimated by the agency. The regulation further provides that the document contain a request that respondents direct to the agency and OIRA any comments on the accuracy of the estimate and suggestions for reducing the burden of the information collection. Placing the burden hour estimate on the face of the information collection should encourage more meaningful public participation in the paperwork clearance process, and provide for the first time a direct and continuing check on agency estimates of burden hours.

6. Under the Paperwork Reduction Act, all information collections must meet the test of "practical utility". How should "practical utility" be defined?

Answer:

The Paperwork Reduction Act requires OIRA to "determine whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility" (44 U.S.C. 3508). A "collection of information" includes "questionnaires, [and] reporting or recordkeeping requirements," whether set forth on forms or in agency regulations (44 U.S.C. 3502(4)). "Practical utility" means "the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion" (44 U.S.C. 3502(16)).

Consistent with the statutory definition of "practical utility," OIRA's regulations at 5 CFR 1320.7(o) define "practical utility" to mean the actual usefulness of information, taking into account its accuracy, adequacy, and reliability, and also taking into account the agency's ability to process the information in a timely manner.

Under this definition, OIRA also assesses actual prior use of information as an indicator of practical utility.

This definition seems sound. It permits OIRA to approve only those information collections that will provide valid data so that credible agency decisions may be made based upon these data, that are conducted in a timely fashion so that results will be available to agency policy officials in advance of decisionmaking, and that are statistically well designed.

7. The Paperwork Reduction Act requires that the public have an opportunity to comment on proposed information collections.

(a) What methods should OIRA use to facilitate public participation in its policymaking process?

(b) How should OIRA incorporate public comments into its review of agency information collections?

Answer:

(a) The Paperwork Reduction Act sets forth various procedures to facilitate public comment on proposed and existing information collections. Agencies must give notice in the Federal Register that OIRA has a proposed collection of information under review, and the public must have meaningful opportunity to comment. In addition, the statutory limitation that OIRA may not approve a collection of information for a period in excess of three years requires agencies, first, to resubmit periodically each ongoing collection of information for OIRA review; second, to give notice to the public of agency and OIRA reconsideration; and, third, to invite the public to suggest improvements or to point out unreasonable burdens. After a respondent member of the public has provided information for several years, the respondent should have a clearer knowledge of the burden involved, and can comment thoughtfully about it. Likewise the agency, and those benefiting from the agency's collection of information, can be expected to develop a clearer idea as time goes on of the practical utility of the information obtained.

OIRA has also, administratively, sought to increase public participation in its paperwork review process in a number of ways. For example, pursuant to its statutory authorization, OIRA has held several public hearings on the need for and burden implications of proposed information collections. In addition, as noted previously, OIRA has, in its 1988 amendments to its paperwork clearance regulation (5 CFR

1320), invited the public to direct to the relevant agency and OIRA any comments on the accuracy of the new burden estimates, and suggestions for reducing such burdens. These regulatory amendments take effect on June 9, 1988; we will have to wait a while to see how effective they are in increasing public participation.

(b) As indicated above, when an agency sends a proposed collection of information for OIRA review, the agency publishes a notice in the Federal Register inviting public comment to both the agency and OIRA. In the 1988 regulatory amendments, OIRA required an expanded description of the proposed information collections in order to make it clearer which proposed collections of information might affect any individual member of the public.

When OIRA receives comments from the public in response to such notices, OIRA places them in a docket designated for each particular collection of information. This docket is kept in a reading room that is open to the public during normal working hours. Prior to the time OIRA makes its decision to approve or disapprove a proposed collection of information, OIRA reviews all public comments in the file. In addition, as OIRA has authority to withdraw its approval at any time (44 U.S.C. 3508), and as ongoing collections of information need approval every three years, OIRA encourages members of the public to file comments whenever they wish. These comments are placed in the docket for that particular collection of information, and reviewed whenever OIRA takes action regarding it.

I have been advised that these procedures are effective, and provide OIRA with public comments from those favoring and those opposing individual collections of information. The 1988 regulatory amendments should further encourage the public to submit comments. If confirmed, I plan to monitor the operation of these OIRA procedures, and will see whether other improvements need to be made.

IV. OIRA OPERATIONS

1. What should be the guiding principles governing implementation of OIRA regulatory review policy?

Answer:

OIRA's regulatory review policy is governed by Executive Order No. 12291, which requires that, to the extent permitted by law, agencies should issue regulations only when:

- o There is adequate information concerning the need for and consequences of the proposed action;

- o The potential benefits to society outweigh the potential costs; and

- o Of all the alternative approaches to a given regulatory objective, the proposed action will maximize net benefits to society.

In addition, in 1983 the Presidential Task Force on Regulatory Relief issued ten regulatory policy guidelines which were endorsed by President Reagan in Executive Order 12498. These regulatory guidelines offer advice to agencies regarding the most frequently encountered issues in federal regulation.

Within this framework, the guiding principles for implementation of these policies should include pursuit of a coherent, rational execution of laws across the government, thus adding a government-wide perspective to an agency's natural tendency to view its own particular programs in isolation. OIRA should ask the hard questions, uncover submerged issues, and assure that issues and alternatives are surfaced so that the public has an opportunity to comment. In addition, OIRA should ensure that the concerns and actions of one agency that might affect other agencies become known to those other agencies, so that coordination and consistency within the government can be enhanced.

2. What do you believe are the primary costs, and primary benefits, OIRA should consider in the evaluation of the regulatory impact of a proposed rule? How should these factors be determined?

Answer:

As a general matter, there is no basis for singling out particular costs or benefits as the focus for review or analysis. Executive Order No. 12291 is cast in broad terms, requiring agencies to address potential benefits, potential costs, and to seek to maximize the net benefits to society from regulatory actions. The Order contemplates a multidimensional approach, designed to assure that we do not lose sight of the broader context of the problem.

Ideally, agencies' regulatory decisions should be based on a careful assessment of all of the potential costs and benefits of alternative courses of action. Under the

agencies' enabling statutes, and under Executive Order No. 12291 as well, the primary responsibility for identifying benefits and costs lies with the agencies themselves. OIRA's role in reviewing agency assessments is in large measure to assure that no significant aspects of either benefits or costs have been overlooked, as well as to provide a measure of quality control and a reasonable degree of consistency in how different agencies approach similar problems. Although OIRA's discussions with an agency are likely to focus on particular aspects that have been either overlooked or inappropriately analyzed, OIRA's reviews should consider the entire panoply of benefits and costs.

Of course, in any particular instance, some aspects of the problem are more important than others. Agencies, and OIRA as well, should focus their attention and their analytical efforts on those aspects that are most likely to affect the final judgement concerning the rule, and those aspects of the problem about which uncertainty is greatest. No general principle can identify these key issues in the abstract. Rather, they can only be identified after careful consideration of the particular problem.

3. Should OIRA attempt to measure non-market benefits such as the quality of life or the value of public health? If so, by what methodology?

Answer:

I believe it is important to measure and assess non-market benefits. As noted above, under Executive Order No. 12291 the primary responsibility for measuring benefits and costs is placed on the regulatory agencies themselves. OIRA's role is basically one of review, to assure that important aspects of the problem are not overlooked and to provide a measure of quality control and consistency across agencies dealing with similar problems.

If an agency promises that a regulation will enhance the public welfare, it is an essential part of responsible government to ask how and to what extent. The answer may be uncertain, and the nature of the issue may be such that it is prudent to proceed despite the uncertainties. It may not be prudent, however, simply to ignore the question. The government routinely asks such questions when it considers the cost of benefits in the budgetary context. The issue is not essentially different when the government seeks to provide benefits indirectly through the regulatory process.

Neither the Executive Order nor common sense requires

reducing all aspects of benefits or costs to monetary values. When reliable monetary measures are available, they often are convenient to use because they provide an unambiguous basis for comparison. Absent such measures, however, it is necessary to measure benefits, and for that matter, costs, in terms appropriate to the particular issue, using whatever methodologies are best suited to the particular problem.

4. What documents relating to OIRA's regulatory review process are appropriate for public inspection? At what point in the process should they be made available?

Answer:

On June 13, 1986, the then Administrator of OIRA issued detailed procedures concerning OIRA reviews under Executive Order Nos. 12291 and 12498. (The procedures have been published as Appendix III of the 1987 Regulatory Program of the United States Government.) These procedures describe in detail the documents related to the OIRA regulatory review process that OIRA makes available for public inspection.

A number of important changes in OIRA's practices resulted. All written materials received from anyone not employed by the federal government pertaining to a rule under review are placed in a file made available to the public in OIRA's public reading room. OIRA will make available, upon written request made after publication in the Federal Register, copies of any draft of an ANPRM, NPRM, or final rule submitted for OIRA's review under Executive Order No. 12291. OIRA will also make available upon written request, made after publication of the Regulatory Program, any agency draft submitted under Executive Order No. 12498. And OIRA places in its reading room copies of all letters returning rules for reconsideration under Executive Order No. 12291. At the end of each month, statistics regarding regulatory reviews completed during the previous month are also placed there.

These procedures seem appropriate, both in terms of releasing the relevant documents and the time of release. They are intended to strike a balance between providing information to the public regarding OIRA's reviews and decisions, and maintaining necessary confidentiality during the course of deliberations within the Executive branch.

5. Some observers of the regulatory review process believe that all OIRA contacts with Executive branch agencies should be logged and docketed for the public record. Other analysts feel that such contacts are privileged and exempt from public disclosure. What do you consider as the proper approach?

Answer:

This is an issue that has been considered for some time. For example, there is a lengthy discussion of it in correspondence in 1985 between the Deputy Administrator of OIRA, and the Deputy Administrator of the Environmental Protection Agency, and which is included in Appendix III of the 1987 Regulatory Program. After reading this and other writings on the subject, my initial reaction is that the arguments against formal logging and docketing of OIRA contacts with Executive branch agencies are stronger than those in support of it.

For one, the practical problems of administering a logging/docketing system seem to me to outweigh its potential value as a means of establishing a public record. For example, logging and docketing of every conversation between an OIRA official and any Executive branch employee would seem impractical and unwarranted. If something less than all is to be covered, at what point would it begin? Whom would it cover? When would it end? There could be a potential blizzard of paperwork responding to a complex of procedures that would be virtually impossible to administer.

Furthermore, I cannot dismiss lightly the fundamental policy issues raised by a general logging/docketing requirement. When carrying out its regulatory review responsibilities, OIRA serves as advisor to the President, and implementer of his policies. It seems to me that logging and docketing could impair the integrity of the deliberative process within the Executive branch, where the free and frank exchange of ideas is essential to the administration of the government.

Ultimately, the combination of this fundamental policy concern and the practical problems of implementation regarding logging suggest to me that it is not the best approach to improving the public policy process, or to enhancing public participation in that process. To say that, however, takes nothing from the basic obligation of OIRA to account for and be responsible for the decisions made.

V. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if confirmed?

Answer:

Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?

Answer:

Yes.

June 24, 1988

ANSWERS TO QUESTIONS FROM SENATOR JIM SASSER
TO S. JAY PLAGER, NOMINEE FOR ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS

1a. Is it your understanding that the Regulatory Relief Task Force chaired by Vice President Bush has been reactivated?

Answer:

Yes. On December 15, 1986, President Reagan issued a Memorandum for the Heads of Executive Departments and Agencies, entitled, "Comprehensive Review of Federal Regulatory Programs," in which he stated:

> I am reestablishing the Presidential Task Force on Regulatory Relief under the chairmanship of the Vice President, and I am directing it to review existing Federal regulatory programs and to develop legislative or other proposals to further eliminate or reduce unnecessary regulatory and paperwork burdens upon the American public and improve American productivity and competitiveness.

1b. (If the answer to Question 1 is yes) What is your understanding of the relationship between the Regulatory Relief Task Force and the Office of Information and Regulatory Affairs since the Regulatory Relief Task Force was formed?

Answer:

In 1981, when President Reagan announced his intention to establish the Presidential Task Force on Regulatory Relief, and again in 1986 when he reestablished the Task Force, he named the Vice President as its Chairman. In each case the Vice President asked the Administrator of the Office of Information and Regulatory Affairs to be its Executive Director. In addition, when President Reagan issued Executive Order No. 12291 in 1981 he made the Director of OMB responsible for implementing various provisions in the Order, "subject to the direction of the Task Force."

When the Task Force was reestablished in 1986, nothing in the Presidential Memorandum changed either the membership of the Task Force or its relationship to OIRA. As noted above, the Administrator continued as Executive Director; the relevant provisions of Executive Order No. 12291 remained in effect. (A copy of Section 6 of the Executive Order, which section is entitled "The Task Force and Office of Management

and Budget," is attached.)

2. How does and how will the Office of Regulatory Affairs keep the Task Force apprised of its actions?

Answer:

I am told that OIRA does not routinely keep the Task Force apprised of its actions under the Paperwork Reduction Act or Executive Order Nos. 12291 and 12498. I have no plans to change this.

3. What is the policy of the Office of Information and Regulatory Affairs in responding to Task Force directives?

Answer:

I am informed that, as a general proposition, the Task Force does not issue directives. It is my understanding that OIRA, consistent with law and the other responsibilities of OIRA, is guided by the recommendations of the Task Force.

4. Has, does, or will the Office of Information and Regulatory Affairs take issues to the Task Force for resolution?

Answer:

It is my understanding that the Administrator of the Office has from time to time taken issues to the Task Force for resolution. It would be my expectation that, pursuant to Section 3(e)(i) of Executive Order No. 12291, if confirmed as Administrator I would do likewise in appropriate cases.

5. Please describe Vice President Bush's interest and involvement in the Office of Information and Regulatory Affairs' actions?

Answer:

I have discussed with previous Administrators and other knowledgeable officers the Vice President's involvement with the Administrator of OIRA. I am told that over the years since 1981 the activities of the Task Force were important to the Vice President, that he chaired each meeting of the Task Force, and, as Chairman, he participated actively in the discussion and resolution of issues. I am also told that from time to time the Vice President and his staff discussed the Administration's regulatory priorities and concerns with previous Administrators of OIRA, both from the viewpoint of their responsibilities as Executive Director of the Task Force and more generally their responsibilities for

executive regulatory and paperwork review.

6. Can you provide us with a list of the meetings and subject matters of the meetings of the Regulatory Relief Task Force?

Answer:

I am not certain that I know when all the meetings of the Task Force occurred, or what subjects were discussed at each. A report was published in August 1983 summarizing the early work of the Task Force. With regard to the more recent work of the Task Force, the following is a list of the meetings and subject matters highlighted in the press releases issued by the Office of the Vice President:

December 22, 1986	Legislative Repeal of Corporate Average Fuel Economy (CAFE) Standards.
	Trucking Deregulation and ICC Sunset Legislation.
	Reform of Banking Regulation Legislation.
March 10, 1987	FDA's Issuance of Treatment IND Regulation.
April 9, 1987	Alternative Fuels Working Group and the Clean Air Act Nonattainment Deadlines.
July 14, 1987	Alternative Fuels Working Group.
December 15, 1987	Issues Presented by Office of Federal Procurement Policy--
	Value Engineering.
	Commercial Products.
	Technical Data Rights.
	Innovative Techniques.
	Florida Research Demonstration Project.
	Administrative Protections for Wetlands.
March 22, 1988	Legislative Deregulation of Natural Gas.

May 10, 1988

Legislative Amendments to the Davis-Bacon Act.

Florida Demonstration Project.

Oil Pipeline Regulatory Reform Legislation.

Status Report on Natural Gas Initiatives.

CAFE Relief Legislation.

Export Control Administrative Reform.

7. Can you provide us with a list of the occasions when Vice President Bush or his staff contacted the Office of Information and Regulatory Affairs or its staff and the nature of the contacts?

Answer:

I am advised that, due to the routine ongoing working relationships among the various offices within the Executive Office of the President, no list of such occasions or the nature of the contacts exists.

APPENDIX II

Executive Order No. 12291

EXECUTIVE ORDER NO. 12291 OF FEBRUARY 17, 1981

Federal Regulation

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. *Definitions.* For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:
(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;
(2) Regulations issued with respect to a military or foreign affairs function of the United States; or
(3) Regulations related to agency organization, management, or personnel.

(b) "Major rule" means any regulation that is likely to result in:
(1) An annual effect on the economy of $100 million or more;
(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
(3) Significant adverse effects on competition, employment, investment, productivity, innovation, on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Sec. 2. *General Requirements.* In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. *Regulatory Impact Analysis and Review.*

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, *provided that*, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.

(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e)(1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f)(1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

Sec. 4. *Regulatory Review.* Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the *Federal Register* at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

Sec. 5. *Regulatory Agendas.*

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

Sec. 6. *The Task Force and Office of Management and Budget.*

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

Sec. 7. *Pending Regulations.*

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in

final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that*, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations," which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

Sec. 8. *Exemptions.*

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *provided that*, any such regulation shall be reported to the Director as soon as it is practicable, the agency shall publish in the *Federal Register* a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statutes or by judicial order, *provided that*, any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the *Federal Register* a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category regulations from any or all requirements of this Order.

Sec. 9. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. *Revocations.* Executive Orders No. 12044, as amended, and No. 12174 are revoked.

RONALD REAGAN

THE WHITE HOUSE
February 17, 1981

BCORP

Business Council on the Reduction of Paperwork
"CUTTING THE COST OF REGULATORY COMPLIANCE"

Mark E. Richardson
EXECUTIVE DIRECTOR

SUITE 903 1625 I STREET N.W. WASHINGTON DC 20006
TELEPHONE 202/331-1915

June 14, 1988

The Honorable John H. Glenn, Chairman
Committee on Governmental Affairs
U.S. Senate -- 340 SDOB
Washington, DC 20510-6250

Dear Mr. Chairman:

The Business Council on the Reduction of Paperwork (BCORP) strongly supports the nomination of Mr. S. Jay Plager as Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

Since 1942, our organization has represented American business interests in matters pertaining to Federal reporting and recordkeeping requirements. Today's hearing marks another important step toward making the Government's paperwork machinery more responsive to business and the public because, for the first time, the appointment of OIRA's Administrator is subject to the Senate's constitutional "advice and consent," which enhances OIRA's authority while making the important Office more accountable to Congress and the American people.

Our judgment, based on almost one-half century of experience, is that the success of the Paperwork Reduction Act (PRA) ultimately depends on solid cooperation and continuing partnership between the legislative and executive branches of government, and we therefore wholeheartedly endorse the concept of today's hearing. As you know, confirmation was one of several important refinements Congress added in 1986, when it amended the original PRA of 1980.

The most important changes made in 1986 sought to improve the highest goal of the PRA, which in the words of the Act's sponsor, the Honorable Lawton Chiles, was "to expand meaningful public participation in how Government makes decisions concerning paperwork burdens." Increased public participation will occur as a result of Congress's strengthening of the "public protection" provision and OMB/OIRA's new regulation controlling paperwork, effective as of June 9, 1988, which implements the 1986 amendments.

Under this new regulation, all information collections must display, along with the requisite OMB Control Number, a "disclosure notice" that defines "burden," states the estimated number of burden hours, and provides specific addresses for the public's comments and suggestions for reducing the burden, thereby enhancing the opportunities for input from the public.

We hope that the Comittee will encourage Mr. Plager, future nominees, and all Federal agencies to make every effort to promote public participation in the paperwork clearance process, as now provided under the new statutory amendments and the new OMB/OIRA regulation.

Let me take this opportunity to offer our highest compliments to Dr. Wendy Lee Gramm, who as OIRA's most recent Administrator set a standard for defending the public against unnecessary information collection burdens which her successors would do well to emulate. Equally important has been the steady concern and firm support of OMB Director James C. Miller III, without which OIRA and Dr. Gramm might possibly not have survived the attacks which have been made on OIRA's very existence.

Several months have passed without a full-time Administrator at OIRA's helm, though Mr. James B. MacRae, Jr., long-term OIRA executive and current Deputy Administrator, has performed admirably as Acting Administrator and deserves the highest praise for his efforts. However, we strongly believe that there should at all times be a presidentially appointed Administrator, to assure that OIRA's authority is fully respected. Unfortunately, Federal agencies have a long history of resisting OIRA's paperwork reduction efforts and working to take advantage of any period of administrative uncertainty.

At no time was there a greater challenge to OIRA's authority than over the past year, when strident efforts were made to resist the implementation of 1986 amendments to the PRA, especially the requirement that the agency's burden estimate be stated on the form itself. It is most important, therefore, that the Committee and the full Senate confirm an able appointee as soon as possible in order to assure OIRA's efforts the fullest possible authority.

We would like to suggest some priorities for Mr. Plager, in the event of his confirmation as the new Administrator of OIRA. The business community must of necessity bear a substantial share of the reporting and recordkeeping burdens imposed by the need to collect taxes, protect the environment, support the economy, and enforce other essential Government programs. However, we encourage increased vigilance to thwart duplicative or unnecessary information collections imposing burdens exceeding their value to our society. Some agencies create new information collections which are transparently mere exercises in self-perpetuation.

It is an alarming fact that the business share of Federal paperwork burdens in 1987 ran to an unprecedented 330 billion dollars, which acccounted for almost two-thirds of the entire Federal paperwork burden. The proportion has been increasing steadily over the past several years. We therefore urge the new Administrator to reverse this trend, and Congress to support him in his efforts. If this should mean expanding the staff of OIRA--and we believe it does--then we feel such increased expense is wholly justified because of the cost containment and other benefits which would accrue to the entire economy.

In closing, we would like to express our hope that Mr. Plager as new OIRA Administrator will recognize the need to create a staff position within OIRA for a well qualified individual with personal knowledge of the legislative history of the PRA, to carry out a training program aimed at ensuring that all OIRA personnel, old and new, are fully familiar with the PRA and the requirements of the paperwork clearance process.

Respectfully,

Mark E. Richardson

Mark E. Richardson
Executive Director

cc: The Honorable Lawton Chiles

MER/blw

Information Industry Association
TWENTY YEARS OF MAKING A DIFFERENCE

555 New Jersey Avenue, N.W., Suite 800 • Washington, D.C. 20001
Telephone: 202/639-8262 • Facsimile: 202/638-4403

June 13, 1988

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
340 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senator Glenn:

This week the Senate Committee on Governmental Affairs will hold the first confirmation hearing on a nominee for the Administrator of Information and Regulatory Affairs within the Office of Management and Budget. On behalf of the Information Industry Association, I wish to convey our thoughts regarding this significant event.

The Information Industry Association (IIA) is a twenty year old trade association representing over 700 companies pursuing business opportunities associated with the creation, distribution and use of information. The IIA is unique in that its membership encompasses the entire spectrum of the information industry, including traditional and electronic publishers, database providers, financial information vendors, interactive electronic services, computer manufacturers, and telecommunications providers. This diverse set of companies shares one common theme - their product is information.

Information has long played a unique role in American society. The ability to speak freely and acquire information without fear of government regulation is the foundation of our individual freedoms and the right of self-government. More recently, there has been growing recognition of the value of information as an economic asset. Today, the information industry is the fastest growing sector of our economy, both domestically and internationally. We are truly embarked upon an information age.

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The Federal government enjoys a unique role in that it is simultaneously a user, creator, disseminator and regulator of information. As such, the information policies of the Federal government have significant implications far beyond the activities of individual departments and agencies. Most importantly, these policies have a direct impact upon the American public. Recognizing this fact, the Congress enacted the Paperwork Reduction Act of 1980.

Implementation of the Paperwork Reduction Act in accordance with the Congressional intent will benefit the public in at least three ways. First, a reduction in Federal reporting and recordkeeping requirements will minimize the burden imposed on individuals and organizations to comply with such requirements. Second, innovative and efficient use of new information technologies will improve the delivery of governmental services. Third, and finally, the public will benefit from a diversity of information products and services developed through a partnership between the public and private sectors. By encouraging private sector investment, this partnership will simultaneously reduce the drain on the Federal treasury and produce a competitive market for the development of information products in the form and media desired by the public.

Despite the growing importance of information and the potential benefits to our citizenry, the Federal government has been slow to recognize that information is a resource deserving sustained, high level management attention. As a result, the development of appropriate policies and regulations has not kept pace with the needs. Despite numerous information policy statutes over the years, the Paperwork Reduction Act of 1980 was the first comprehensive attempt to embody in law a philosophy and structure for managing government information resources. There are many who consider the Paperwork Reduction Act one of the most significant pieces of legislation in recent history.

Eight years after enactment, much needs to be done to achieve the objectives of the law. Despite continuing Congressional and public interest, many Federal officials continue to cling to the outmoded idea that information is a "free" good and only rarely do we find information resources being managed as are other resources. During this same period, new issues and challenges have emerged as information takes on increasing importance. Now, more than ever, the government must begin managing its information activities.

In passing the Paperwork Reduction Act of 1980, the Congress understood and emphasized both the importance of partnership between the executive and legislative branches of the government and the need for accountability. Federal information policy is too important to be left solely to the discretion of the executive branch. The Congress must and should play a continuing and active role in this arena. Senate confirmation of this Presidential choice to be OIRA Administrator provides an important opportunity for the Congress to provide direction for this important office. For that reason, we fully support the need for Senate confirmation of the OIRA Administrator.

We urge the Committee to carefully consider the qualifications of the nominee. If the goals of the Paperwork Reduction Act are to be achieved, the individual who occupies the Administrator's office must recognize the value of information as a resource and be willing to put in place policies and regulations that will ensure the efficient and effective management of such resources. Once in place, this individual must be willing to take appropriate action to ensure agency compliance with these policies and regulations.

Most importantly, however, the Administrator must be willing to work with the Congress, the public and the information industry on the development of Federal information policies. Such policies, if properly developed and implemented, will reduce the burden imposed on the public by Federal activities, improve the delivery of public services and foster a competitive marketplace of ideas and information products, unfettered by unnecessary government regulation. Such an environment, developed through an open process in which all may participate, is essential to achieving the objectives of the Paperwork Reduction Act and ensuring a diversity of information products and services responsive to the needs of our citizens and the preservation of our liberties.

Just as the Paperwork Reduction Act was the result of overwhelming bipartisan support, the information policy issues now emerging transcend partisan politics. As the Congress faces the challenges of the information age, we would be pleased to assist in any way possible.

Sincerely,

Kenneth B. Allen

KENNETH B. ALLEN
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